

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

GEORGE F. ALDRIDGE, JR.,

Plaintiff,

v.

LEE BROWNING, et al.,

Defendants.

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No. 1:18 CV 55 ACL

MEMORANDUM AND ORDER

This matter is before the Court on the motion of plaintiff George F. Aldridge, Jr., an inmate at the Eastern Reception, Diagnostic and Correctional Center, for leave to commence this civil action without prepayment of the required filing fee. Having reviewed the motion and the financial information submitted in support, the Court has determined to grant the motion, and assess an initial partial filing fee of \$1.22. *See* 28 U.S.C. § 1915(b)(1). In addition, for the reasons explained below, the Court will direct plaintiff to file an amended complaint.

28 U.S.C. § 1915(b)(1)

Pursuant to 28 U.S.C. § 1915(b)(1), a prisoner bringing a civil action *in forma pauperis* is required to pay the full amount of the filing fee. If the prisoner has insufficient funds in his prison account to pay the entire fee, the Court must assess and, when funds exist, collect an initial partial filing fee of 20 percent of the greater of (1) the average monthly deposits in the prisoner's account, or (2) the average monthly balance in the prisoner's account for the prior six-month period. After payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. 28 U.S.C. § 1915(b)(2). The agency having custody of the prisoner will forward these

monthly payments to the Clerk of Court each time the amount in the prisoner's account exceeds \$10.00, until the filing fee is fully paid. *Id.*

In support of the instant motion, plaintiff submitted an inmate account statement showing an average monthly deposit of \$6.10 and an average monthly balance of \$5.04. The Court will therefore assess an initial partial filing fee of \$1.22, which is twenty percent of plaintiff's average monthly deposit.

Legal Standard on Initial Review

Under 28 U.S.C. § 1915(e)(2)(B), the Court is required to dismiss a complaint filed *in forma pauperis* if it is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief. An action is frivolous if it “lacks an arguable basis in either law or fact.” *Neitzke v. Williams*, 490 U.S. 319, 328 (1989). An action is malicious if it is undertaken for the purpose of harassing the named defendants and not for the purpose of vindicating a cognizable right. *Spencer v. Rhodes*, 656 F. Supp. 458, 461-63 (E.D.N.C. 1987), *aff'd* 826 F.2d 1059 (4th Cir. 1987). An action fails to state a claim upon which relief can be granted if it does not plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

Discussion

The Federal Rules of Civil Procedure provide, in relevant part, that a complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief” and a “demand for the relief sought.” Fed. R. Civ. P. 8(a). They also provide that “each allegation must be simple, concise, and direct.” Fed. R. Civ. P. 8(d)(1).

The instant complaint spans a total of 69 pages, most of which are typewritten and single-spaced. It contains 156 numbered paragraphs, followed by an additional ten pages containing claims and plaintiff's prayer for relief. It brims with irrelevant, redundant, and overly detailed

information. Even if the Court were to direct service of process to be issued, the amended complaint would fail to give the defendants sufficient notice of the claims asserted against them. The Court recognizes that plaintiff is representing himself in these proceedings, but even *pro se* plaintiffs are expected to follow the Federal Rules of Civil Procedure. See *Ackra Direct Marketing Corp. v. Fingerhut Corp.*, 86 F.3d 852, 856-57 (8th Cir. 1996).

Plaintiff will be given the opportunity to file an amended complaint. Plaintiff must prepare the amended complaint using a Court-provided form, and he must specify whether he intends to sue each defendant in an official capacity, individual capacity, or both.¹ In the “Caption” section of the form complaint, plaintiff should write the name of the defendant(s) he wishes to sue. In the “Statement of Claim” section, plaintiff should begin by writing the first defendant’s name. In separate, numbered paragraphs under that name, plaintiff should write a short and plain statement of the factual allegations supporting his claim against that defendant. If plaintiff is suing more than one defendant, he should do the same thing for each one, separately writing each defendant’s name and, under that name, a short and plain statement of the factual allegations supporting his claim against that defendant. Plaintiff is reminded that each of his allegations must be simple, concise, and direct. He may not amend his complaint by referring to, or trying to incorporate, other documents.

Plaintiff must file his amended complaint within thirty (30) days of the date of this Memorandum and Order. The filing of the amended complaint will completely replace the original complaint. E.g., *In re Wireless Telephone Federal Cost Recovery Fees Litigation*, 396 F.3d 922, 928 (8th Cir. 2005). Plaintiff’s failure to timely comply with this Memorandum and Order may result in the dismissal of this case with prejudice. See *Micklus v. Greer*, 705 F.2d

¹ The failure to sue a defendant in his or her individual capacity may result in the dismissal of that defendant.

314, 317 n. 3 (8th Cir. 1983) (if a plaintiff persistently fails to comply with Rule 8(a), a district court is justified in dismissing an action with prejudice).

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to proceed *in forma pauperis* (Docket No. 2) is **GRANTED**.

IT IS FURTHER ORDERED that plaintiff must pay an initial filing fee of \$1.22 within thirty (30) days of the date of this Order. Plaintiff is instructed to make his remittance payable to "Clerk, United States District Court," and to include upon it: (1) his name; (2) his prison registration number; (3) the case number; and (4) the statement that the remittance is for an original proceeding.

IT IS FURTHER ORDERED that the Clerk is directed to mail to plaintiff a copy of the Court's prisoner civil rights complaint form.

IT IS FURTHER ORDERED that plaintiff must file an amended complaint within thirty (30) days from the date of this Order.

IT IS FURTHER ORDERED that if plaintiff fails to comply with this Order, the Court may dismiss this action without further proceedings.

Dated this 14th day of May, 2018.



ABBIE CRITES-LEONI
UNITED STATES MAGISTRATE JUDGE